

1982 S.C. Op. Atty. Gen. 55 (S.C.A.G.), 1982 S.C. Op. Atty. Gen. No. 82-50, 1982 WL 155019

Office of the Attorney General

State of South Carolina

Opinion No. 82-50

July 20, 1982

***1 SUBJECT: Motor Vehicles, Indictments and Informations**

Charging same individual with driving under suspension and violating Habitual Traffic Offenders Act for the same act of driving does not violate the defendant's constitutional rights against double jeopardy.

TO: Colonel P. L. Meek
Commander
South Carolina Highway Patrol.

QUESTION:

May an individual who has been driving on South Carolina highways and whose driver's license is under suspension and who has also been declared an Habitual Offender under S. C. Code § 56-1-1070 be charged with both offenses without violating his constitutional protection against double jeopardy?

STATUTES AND CASES:

South Carolina Code §§ 56-1-460, 56-1-1010, 56-1-1020,

56-1-1100. [Brown v. Ohio](#), 431 U.S. 161 (1977); [Blockburger vs. U. S.](#), 284 U.S. 299 (1932); [State vs. Lawrence](#),

266 S.C. 433, 223 S.E.2d 856 (1976); [State vs. Grueling](#),

[257 S.C. 515](#), 186 S.E.2d 706 (1972); [State vs. Corbett](#), 117 S. C. 356, 109 S.E. 133 (1921).

DISCUSSION

The Fifth Amendment to the United States Constitution provides that no person shall 'be subject for the same offense to be twice put in jeopardy of life or limb.' This clause has been interpreted to apply to three separate situations prohibiting: (1) reprosecution for the same offense following an acquittal; (2) reprosecution for the same offense following conviction; and (3) multiple punishment for the same offense. [Brown v. Ohio](#), 431 U.S. 161 (1977). The third type of double jeopardy is the only one pertinent to the question posed.

[Article I, Section 12 of the South Carolina Constitution](#) provides that 'no person shall be subject for the same offense to be twice put in jeopardy of life or liberty . . .'. Although this language is not quite identical to that found in the U. S. Constitution, the United States and South Carolina Supreme Courts have been uniform in their interpretations of these two sections.

Both constitutional provisions refer specifically to reprosecutions or multiple prosecutions 'for the same offense.' The South Carolina Supreme Court has specifically noted that the prohibition is against double jeopardy for the same offense and not for the same act. [State v. Corbett](#), 117 S. C. 356, 109 S.E. 133 (1921). In cases where two or more violations arise from the same

transaction or events, the courts have used the same evidence test to determine if the offenses are identical for purposes of double jeopardy. [Blockburger v. U.S., 284 U.S. 299 \(1932\)](#); [State v. Lawrence, 266 S.C. 433, 223 S.E.2d 856 \(1976\)](#). The same evidence test states that two offenses are distinct if one requires proof which the other does not. Thus, two offenses may arise out of the same transaction or events. [State v. Grueling, 257 S.C. 515, 186 S.E.2d 706 \(1972\)](#).

Two elements of proof are necessary to convict a person for violating [S. C. Code § 56-1-1100](#). First, the person must have previously been declared an Habitual Offender as defined by [S. C. Code § 56-1-1020](#). Second, the person must have been operating a motor vehicle in this State while the judgment of the court prohibiting such operation was in effect.

*2 Two elements are also necessary for conviction of a person for driving under suspension ([S.C. Code § 56-1-460](#)). First, the person's driver's license must be currently suspended. Second, the person must be driving in South Carolina while the suspension was in effect.

Both the DUS statute and the Habitual Offender statute require the accused to be driving in South Carolina. Each statute has a different second element, however. The second element of proof for a conviction under the Habitual Offender Act is that a judgment declaring the accused to be an Habitual Offender must be in effect. The second element necessary for a DUS conviction is that the accused driver's license privilege be currently suspended.

It is clear also from [S. C. Code § 56-1-1010\(c\)](#) that the General Assembly intended to enhance the punishment for offenders by creating an additional statutory offense. That section states in pertinent part: 'It is hereby declared to be the policy of this state: . . . (c) To discourage repetition of unlawful acts by individuals against the peace and dignity of this State and her political subdivisions and to impose additional penalties upon Habitual Offenders who have been convicted repeatedly of violations of the traffic laws of this State.'

CONCLUSION:

It is the opinion of this Office that a person may be charged with violating §§ [56-1-1100](#) and [56-1-460](#) arising out of the same event without offending the constitutional prohibitions against double jeopardy found in both the U.S. and South Carolina Constitutions.

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